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DOJ Instruction

REASONABLE ACCOMMODATION PROCESS

PURPOSE:	Establishes the Department of Justice (DOJ or Department) process and procedures for providing reasonable accommodation to employees and applicants
SCOPE:	All DOJ components
ORIGINATOR:	Justice Management Division (JMD), Equal Employment Opportunity Staff (EEO)
CATEGORY:	(I) Administrative, (II) Equal Employment Opportunity
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ACTION LOG

All DOJ directives are reviewed, at a minimum, every 5 years and revisions are made as necessary. The action log records dates of approval, recertification, and cancellation, as well as major and minor revisions to this directive. A brief summary of all revisions will be noted. In the event this directive is cancelled, superseded, or supersedes another directive, that will also be noted in the action log.

Action	Authorized by	Date	Summary
Initial Approval	Richard Toscano Director Equal Employment Opportunity Staff	23 SEP 2010	Sets forth the Department's process and procedures for providing reasonable accommodations to employees and applicants.

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DEFINITIONS

Term	Definition
Bureau	An organizational unit of the Department as defined in 28 C.F.R. § 0.1.
Component	An office, board, division, or bureau of the Department as defined in 28 C.F.R. § 0.1.
Deciding Official	An individual who is authorized to make determinations regarding reasonable accommodation requests.
Direct Threat	A threat that poses a significant risk of substantial harm to the health or safety of an individual or others, and cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a "direct threat" must be based on an assessment of the individual's present ability to safely perform the essential functions of the job, considering reasonable medical judgment and relying on the most current medical knowledge and/or best available objective evidence.
Disability	With respect to an individual: (i) a physical or mental impairment that substantially limits one or more major life activities of such individual; or (ii) a record of such an impairment; or (iii) being regarded as having such an impairment.

Term	Definition
Essential Job Functions	Fundamental job duties of the employment position an individual with a disability holds or desires. They do not include the marginal functions of the position. A job function may be considered essential for any of several reasons, including, but not limited to, the following: (i) The position exists is to perform that function; (ii) The limited number of employees available among whom the performance of that job function can be distributed; and/or (iii) The incumbent in the position is hired for his or her expertise or ability to perform the particular function. Whether a particular function is essential includes, but is not limited to: (i) The employer's judgment about which functions are essential; (ii) Written job descriptions prepared before advertising or interviewing applicants for the job; (iii) The amount of time spent on the job performing the function; (iv) The consequences of not requiring the incumbent to perform the function; (v) The terms of an applicable collective bargaining agreement; (vi) The work experience of past incumbents in the job; and/or (vii) The current work experience of incumbents in similar jobs.

Term	Definition
Interactive Process	A collaborative effort in which the employer and the individual seeking an accommodation engage in dialogue to clarify what the individual needs and identify potential reasonable accommodations. For example, after a request for accommodation has been made, the supervisor or deciding official communicates with the individual making the request to identify an effective accommodation that will allow the employee to perform the essential functions of the job. The interactive process may include: (i) An analysis of the particular job to determine its purpose and essential functions; (ii) A consultation with the employee to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation; (iii) An identification of potential accommodations and, in conjunction with the employee, an assessment of the effectiveness of those accommodations in enabling the employee to perform the essential functions of the job; (iv) Consideration of the preference of the employee and the selection and implementation of an accommodation that is appropriate for the employee and the employer; and (v) The overall needs of the office.

Term	Definition
Major Life Activities	Include, but are not limited to: (i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and (ii) The operation of a major bodily function, including functions of the immune system, special sense organs, and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. In determining other examples of major life activities, the term "major" must not be interpreted strictly to create a demanding standard for disability. Whether an activity is a major life activity is not solely determined by whether it is of "central importance to daily life."
Personal Assistance Services	Assistance with performing activities of daily living that an individual would typically perform if he or she did not have a disability, and that is not otherwise required as a reasonable accommodation, including, for example, assistance with removing and putting on clothing, eating, and using the restroom.
Physical or Mental Impairment	(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic and lymphatic, skin, and endocrine. (ii) Any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disability.
Qualified Individual with a Disability	A person who meets the required skill, experience, education, or other requirements of an employment position that he or she holds or seeks, and who can perform the essential functions of the position with or without a reasonable accommodation.

Term	Definition
Reasonable Accommodation	A modification or adjustment to a job or to the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform the essential job functions. Also includes adjustments to ensure that a qualified individual with a disability has rights and privileges in employment that are equal to those of nondisabled employees.
Substantially limits	An impairment that limits the ability of an individual to perform a major life activity as compared to most people in the general population.
Undue Hardship	Occurs when the provision of an accommodation would cause significant difficulty or expense to an agency. The employer considers the following factors when determining if providing accommodation is an undue hardship: (i) The nature and net cost of the accommodation needed; (ii) The overall financial resources of the component involved in the provision of the reasonable accommodation, the number of persons employed in the component, and the effect on expenses and resources; (iii) The overall financial resources and size of the agency with respect to the number of its employees, and the number, type, and location of its operational components; (iv) The agency's operations, including the composition, structure, and functions of the workforce; the geographic separateness; and the administrative or fiscal relationship of the operational component to the organizations; and (v) The impact of the accommodation upon the component, including the impact on the ability of other employees to perform their duties and the impact on the operational component's ability to conduct its business.

ACRONYMS

Acronym	Meaning
AAG/A	Assistant Attorney General for Administration
ADAAA	Americans with Disabilities Act as Amended
ADR	Alternative Dispute Resolution
C.F.R.	Code of Federal Regulations
DOJ	Department of Justice
DEPM	Disability Employment Program Manager
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
EEOS	Equal Employment Opportunity Staff
HRO	Human Resources Office
JMD	Justice Management Division
MSPB	Merit Systems Protection Board
OGC	Office of General Counsel
OPM	Office of Personnel Management
RAC	Reasonable Accommodation Coordinator

I. Reasonable Accommodation in the Department

A. Component Processes

Each component may establish its own process for handling reasonable accommodation requests, consistent with Equal Employment Opportunity Commission (EEOC) guidance on reasonable accommodation as cited in Appendix A, this instruction, and the related DOJ Policy Statement 1100.01, *Reasonable Accommodation*. The guidance also requires the Department and each component that adopts a reasonable accommodation procedure to submit those procedures and any modifications to an existing policy and procedures to the EEOC. Components and bureaus should provide a copy of their procedures and any subsequent modifications to the Justice Management Division (JMD) Equal Employment Opportunity Staff (EEOS) for review prior to submission to the EEOC. Component and bureau reasonable accommodation policies and procedures should be consistent with the departmental reasonable accommodation policy, EEOC guidelines, and this instruction.

B. Assistance

Assistance is available from the JMD EEOS, component Human Resources Offices (HRO), component Reasonable Accommodation Coordinators (RAC), Disability Employment Program Managers (DEPM), and component equal employment opportunity (EEO) offices, which have staff members with the appropriate knowledge of the requirements of the Rehabilitation Act of 1973, (Rehabilitation Act) as amended, possible accommodations, and available resources. Any supervisor, manager, employee, or applicant may consult with these offices for further information or assistance when requesting or processing a request for reasonable accommodation.

C. Funding

Most accommodations do not cost anything such as job restructuring, leave adjustments, and scheduling changes. However, there may be instances when an accommodation does come with a cost. Pursuant to the regulations implementing the undue hardship exception, all resources available to the agency as a whole must be considered when determining whether a denial of a reasonable accommodation is appropriate based upon cost. Excluded, however, are those resources designated by statute for a specific purpose that does not include reasonable accommodation. 29 C.F.R. § 1630.203 (d)(3) (ii).

II. Process and Procedures for Reasonable Accommodation

A. Initiating the Request

1. Employees

Generally, it is the responsibility of the employee to request a reasonable accommodation, or someone else can make that request if the employee is unable to do so. A request does not have to use any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." A request is any communication, oral or written, in which an individual asks or states that he or she needs the component to provide, change, or adjust something at work for a reason related to a mental or physical impairment.

In most cases, an employee may request a reasonable accommodation from his or her first line supervisor or other designated officials as determined by the component. Under most circumstances, however, employees should submit a written request to the first-line supervisor using DOJ Form 100A, *Request for Reasonable Accommodation*, see Appendix B. In some instances it may be appropriate to submit the request to a second line supervisor. If an employee initially makes the request orally, he or she should then submit a written request using DOJ Form 100A. Regardless, the supervisor must begin processing the request upon receipt of any oral or written request. Requests for accommodation may also be made by email, letter, or memorandum to the supervisor or the deciding official in lieu of the DOJ Form 100A.

An employee may request a reasonable accommodation at any time during his or her employment. An employee with a disability is not precluded from requesting a reasonable accommodation because he or she did not ask for one when applying for a job, after receiving a job offer, or if his or her condition has changed over the course of employment. Rather, an employee should request a reasonable accommodation when he or she learns there is a workplace barrier that is preventing him or her, due to a disability, from effectively competing for a position, performing a job, or equal access to the privileges and benefits of employment. Employees are encouraged to request a reasonable accommodation before performance suffers or conduct problems occur.

Employees who have recurring or on-going requests for reasonable accommodation do not necessarily need to fill out the DOJ Form 100A or otherwise make a formal request each time an accommodation is needed. Employees should give appropriate advance notice each time the recurring accommodation is needed, unless otherwise arranged with the deciding official.

Where feasible, individuals should notify the supervisor or deciding official at least 7 to 10 business days before the date the accommodation is needed to allow sufficient time to coordinate the accommodation. Examples of recurring or on-going requests include sign language interpreter services, readers, and accommodations for participation in training programs (*e.g.,* providing printed handouts in large font or ensuring access to assistive technologies at training sites).

2. Applicants

All vacancy announcements must designate at least one point of contact within the agency's HRO for applicants to request a reasonable accommodation. To avoid delay in processing the request and providing a timely accommodation, an applicant should inform the HRO point of contact as soon as he or she realizes the need for a reasonable accommodation for some aspect of the hiring process.

An applicant may also request a reasonable accommodation orally or in writing from any agency official with whom the applicant has contact in connection with the application process. If this occurs, the official who receives the request should notify the HRO of the request no later than 2 business days from the date of the request.

3. Third Party Requests

A family member, friend, health care professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability. When a third party makes such a request, the supervisor or deciding official should confirm with the employee or applicant whether he or she wants the reasonable accommodation before proceeding. If this is not possible, the supervisor or deciding official should process the request if it seems appropriate and will consult directly with the individual who needs the accommodation as soon as practicable.

B. Processing the Request

1. Supervisor/Deciding Official

In most cases, the employee's supervisor should receive and process the request for reasonable accommodation regardless of the type of accommodation the employee is seeking. In accordance with Section II. E of this Instruction, the supervisor may request reasonable medical documentation when the employee's need for accommodation is not obvious and if there is not sufficient medical

information on record which demonstrates that need. The supervisor or deciding official may consult with the appropriate HRO, OGC, Disability Employment Program Manager (DEPM), Reasonable Accommodation Coordinator (RAC), and/or EEO office, as needed, to process the request. The supervisor or deciding official must consult with the HRO when an accommodation is requested in conjunction with an anticipated or pending performance or conduct-based action.

Supervisors should begin processing oral requests immediately, even while waiting for the employee to complete forms or provide other written documentation. Supervisors or deciding officials should communicate with the employee in writing to acknowledge the request, explain who will make the decision on the request, and describe what will happen during the process.

2. Interactive Process

The supervisor or deciding official and the employee engage in an interactive process to determine if the employee is a qualified individual with a disability and to identify an effective, reasonable accommodation. The interactive process should help identify the precise nature of the issue that generated the request and why the desired accommodation is necessary to assist the employee. Alternative accommodations that may also be effective in meeting an employee's needs should also be considered. Communication is a priority throughout the entire process, but particularly where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where different forms of reasonable accommodation are being considered. The supervisor or deciding official may ask the DEPM or RAC to assist in the interactive process.

The interactive process may include: (1) analysis of the particular job to determine essential job functions; (2) consultation with the employee to ascertain how his or her limitations could be overcome by an accommodation; (3) seeking additional information on the nature of the alleged disability and the employee's limitations; (4) identification of potential accommodations and whether they would be effective; (5) consideration of the employee's preference; and (6) consideration of the overall needs of the office and any potential impact on operations.

An effective accommodation need not be the most expensive, nor must it be exactly what the employee requests. An employee who requests an accommodation should cooperate in good faith when providing the information necessary to assess the request. An employee who fails to engage in the interactive process may risk getting ineffective accommodations or having his or

her request denied due to a lack of information needed to make a proper determination.

C. Time Limits for Processing Requests and Providing Reasonable Accommodation

1. Response to Request

A supervisor or deciding official should contact an employee as soon as practical no later than 3 business days after a new request is received to acknowledge and begin discussing the accommodation request, and to start gathering the necessary information. If an employee makes a reasonable accommodation request to someone who is not the deciding official, the agency official who received the request should forward the request to the requestor's supervisor or deciding official on the same date that it was received or as soon as practicable.

The supervisor or deciding official should not delay requesting medical documentation (when necessary) or discussing the requested accommodation or possible alternative accommodations with the employee. An employee who receives inquiries or questions from the supervisor or deciding official related to a request for an accommodation is expected to respond and provide the necessary information within 10 business days to meet the time frames set forth in this Instruction.

When extenuating circumstances are present, the time for processing a request for reasonable accommodation or providing the accommodation will be extended as necessary. Extenuating circumstances are those circumstances that could not reasonably have been anticipated or avoided or that are beyond the component's ability to control. These circumstances might include situations where equipment must be back-ordered or other legitimate delays. Extensions should be limited to those that are truly necessary and only for as long as required to deal with the extenuating circumstance.

2. Approval of Request and Provision of Accommodation

A final disposition ordinarily should be made within 30 business days of the request or receipt of medical documentation, in cases where medical documentation is required. Providing reasonable accommodation should occur no later than 15 business days from the final disposition of the request, barring extenuating circumstances. As soon as the supervisor or deciding official determines that reasonable accommodation will be provided, the decision should be immediately communicated in writing to the employee or applicant who made

the request. If an accommodation can be made in less time than authorized in these procedures, every effort should be made to do so.

If a supervisor or deciding official fails to respond to a request for accommodation within 15 business days, an employee may contact the second line supervisor, HRO DEPM, RAC, or EEO office.

3. Notification of Delays and Temporary Measures

When processing the request or providing the accommodation will take longer than anticipated, such as when equipment must be back-ordered or there are other legitimate delays, the supervisor or deciding official must inform the individual of the reason for the delay and keep that individual informed of the date on which the process should be completed and when he or she will receive the accommodation. When a delay occurs, the supervisor must provide a temporary accommodation absent an undue hardship to enable the employee to perform the essential functions of the job.

4. Requests for Expedited Review

When a need is urgent, an employee can make a request for an expedited review and decision in a time frame that is shorter than the 30 business days discussed above. Such requests should explain the urgency of the need. Expedited processing might be necessary where, for instance, the reasonable accommodation is needed for a specific agency activity that is scheduled to occur shortly (*e.g.*, an employee may need a sign language interpreter for a meeting scheduled to take place within 5 days or for imminent work-related travel).

D. Medical Information

1. Whether Medical Information is Necessary

When the need for the requested accommodation is obvious, it is generally not necessary for the employee to provide medical documentation. For example, it is not necessary for an employee who uses a wheelchair to submit medical information for the reasonable accommodation of raising an office desk or adjusting other furniture in the workspace. Similarly, medical information should not be required from a deaf applicant to have sign language interpreting services provided during an interview.

The supervisor or deciding official may request medical information to document a claimed disability and the need for accommodation when:

a. The functional limitations caused by the disability and the need for accommodation are not obvious or have not been previously disclosed;

b. The information submitted by the employee or applicant is insufficient to document the disability or the need for the reasonable accommodation or the functional limitations the disability causes;

c. The extent, duration, or effectiveness of a requested accommodation is not clear.

Documentation unrelated to the disability claimed should not be requested.

2. Process for Requesting Medical Information

Where the disability or need for accommodation is not obvious or already known, it is the responsibility of the employee or applicant requesting reasonable accommodation to provide appropriate medical information related to the functional impairment and the requested accommodation. If the employee or applicant fails to provide documentation or information where it has been properly requested, the component may deny a reasonable accommodation request.

a. The supervisor or deciding official should, in consultation with other appropriate entities (component's EEO office, DEPM, RAC, OGC, HRO, or agency medical and occupational health staff); determine whether additional medical or other information is needed. If appropriate, the supervisor or deciding official will request additional information.

b. If a determination is made to seek additional medical information, a specific explanation will be provided to the individual seeking the accommodation to clarify why the information already provided is insufficient. The explanation also will clarify what additional information is necessary for the agency to substantiate that the individual has a disability and, consequently, should be granted the requested reasonable accommodation.

c. Requests for medical information will follow the requirements set forth in EEOC Enforcement Guidance "Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act, as amended," (ADAAA) (July 27, 2000), and must pertain to the following:

i. The nature, severity, and duration of the individual's impairment;

ii. The activity or activities that the impairment limits;

iii. The extent to which the impairment limits the individual's ability to perform the activity or activities; or

iv. The reason the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will help the individual apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace.

d. Upon receipt of the requested medical or other information from the employee or applicant, the supervisor or deciding official at their discretion may forward the material, at the expense of the component, to a (third party) medical professional or other appropriate internal or external consultant for review. If the employee or applicant does not provide sufficient documentation from his or her own health care provider or other appropriate professional to substantiate the existence of a disability and the need for a reasonable accommodation, the supervisor or deciding official may deny the request, request additional information, or request that a health care professional of the component's choice examine the individual, at the component's expense. Medical information is insufficient if, at a minimum, it does not specify the existence of a disability and explain the need for a reasonable accommodation.

e. An applicant or employee whose position is subject to medical standards may also be required to submit to a fitness for duty examination if a question exists about the individual's ability to perform the essential functions of his or her duties and responsibilities. Failure of a fitness for duty examination and an ultimate determination that the employee is not fit for duty does not preclude the employee from requesting a reasonable accommodation, nor does failure of a fitness for duty evaluation automatically disqualify the employee from receiving an accommodation. In such instances, the request for reasonable accommodation should be reviewed and considered. If it is not possible to accommodate the employee in his or her position, reassignment may be considered as an accommodation

f. Once all the necessary information has been gathered, the supervisor or deciding official will continue processing the request.

III. Confidentiality Requirements Regarding Medical Information and the Reasonable Accommodation Process

A. Medical Information Confidentiality

The Rehabilitation Act requires that all medical information be kept confidential. All medical information, including information about the disability and functional limitations that a component obtains in connection with a request for reasonable accommodation, must be kept in a file separate from the individual's official personnel file or supervisor's desk file. This rule applies to both applicants and employees, regardless of whether they are determined to be individuals with disabilities or whether their requests were approved. Any employee who obtains or receives such information is strictly bound by these confidentiality requirements.

B. Records Custody

The supervisor, deciding official, or other personnel designated by the Head of Component will maintain custody of records, including medical records, obtained or created during the processing of a request for reasonable accommodation. Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the confidentiality requirements that are attached to it and the obligation of the recipients to safeguard the information accordingly. All records will be maintained in accordance with the Rehabilitation Act, Privacy Act, and EEOC guidance.

Supervisors, deciding officials, RACs, DEPMs, and medical personnel, who have access to medical information in relation to an accommodation request, may not disclose this information. Other employees who have a need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodations, but medical information should be disclosed only if strictly necessary. Exceptions are:

1. When release is required by law or court order.

2. First aid and safety personnel may be informed, when appropriate, if the disability requires emergency treatment or disclosure is needed for emergency preparedness.

3. Government officials may be given information necessary to investigate compliance with the Rehabilitation Act.

4. Workers' compensation offices or insurance carriers may be given the information in certain circumstances.

5. Agency EEO officials may be given the information to maintain records and to evaluate and report on the agency's performance in processing reasonable accommodation requests.

IV. Examples of Reasonable Accommodations

The types of assistance that can be provided as a reasonable accommodation are best determined on a case-by-case basis, taking into consideration the employee, the specific disability and resulting limitations, the essential duties of the particular job, the work environment, and the feasibility of any proposed accommodation. Reasonable accommodation may include, but is not limited to, the following:

A. Modification of the Worksite

Facilities should be made readily accessible. Modifications may include, but are not limited to, arranging files or shelves for accessibility; raising or lowering equipment and work surfaces to provide comfortable working heights; installing special holding devices on seats, desks, or machines; using Braille labels or other tactile cues for identification purposes; or installing special equipment, such as ergonomic keyboards, telephone amplifiers, or special furniture such as ergonomic chairs or raised/standing desks.

B. Assistive Devices

Components are authorized to purchase equipment or assistive devices if they are necessary to fulfill the official business of the agency. Equipment or assistive devices may not be provided if they are primarily of a personal nature, such as eyeglasses or hearing aids. In determining whether the purchase of equipment and assistive devices should be authorized, components should consider whether the device will enable the person with a disability to perform tasks he or she would otherwise be unable to carry out and whether the major benefit would be an increase in the quantity, quality, or efficiency of the employee's work.

C. Readers, Interpreters, Personal Assistance Services, and Service Animals

Components have authority under 5 U.S.C. § 3102 to obtain the services of , readers, interpreters, and personal assistants and to assign such assistants as necessary to enable the employee with a disability to perform his or her job, either at the regular duty station or while traveling on official business.

Reader – A reader is someone who reads written or printed materials to a person who is blind or has low-vision. It may be a reasonable accommodation to provide a reader for a qualified individual with a disability if this would not impose an undue hardship.

In some job situations, a reader may be the most effective and efficient accommodation, but, in other situations, an assistive device or software may enable a visually impaired individual to read independently.

Qualified Sign Language Interpreter – This is someone who is fluent in American Sign Language and English (or other languages) and is able to facilitate communication between deaf and hearing by using sign language.

Captioning – This is the process of converting the audio portion of a video production or live event into text that is displayed on a television or film screen.

Computer-Aided Real-Time Translation – This is a form of captioning that provides a word-for-word transcription of what is being said. It may be read on a laptop computer or projected onto a screen television or, for a large audience, onto a full-size screen.

Personal Assistance Services – There are two types of personal assistance services. Services, such as those needed by a person with a targeted disability, to perform essential job functions should be provided as a reasonable accommodation, unless doing so would pose an undue hardship. These services include general administrative tasks, carrying items, lifting and moving equipment and files, and other tasks needed to perform specific job functions.

A personal assistance service may also be provided during work hours or work-related travel if a person has a targeted disability that necessitates assistance to eat, to put on and remove clothing, to use the restroom, and/or to transfer from a wheelchair to a taxi or other modes of transportation. Although this assistance is not considered a reasonable accommodation, it should be provided to maintain the Affirmative Action obligations of Section 501 of the Rehabilitation Act of 1973, unless it would pose an undue burden to do so.

Service Animals – A service animal is specifically trained to assist a person with a disability. Some of the services provided by service animals include, but are not limited to: guiding people who are blind; alerting people who are deaf; pulling a wheelchair; alerting and protecting a person who is having a seizure; reminding a person with a mental impairment to take prescribed medications; calming a person who has an anxiety attack due to some mental impairment; retrieving and delivering objects, and assisting with other tasks.

Unless the disability and purpose of a service animal are obvious, limited inquiries are permitted. Supervisors may ask two questions: (1) Is the service animal required because of a disability? (2) What has the animal been trained to do that will assist the

employee? The supervisor may require the employee to provide additional information from a healthcare provider or the organization that trained the animal solely to better understand why the animal is needed and how the animal will assist the employee. An employee is responsible for the care of his or her service animal. When an employee is allowed to bring the service animal to work, the supervisor should consult with the employee to find out what accommodations are needed to ensure the employee and the service animal have access to the workplace and that the employee is able to reasonably care for the animal.

Allergies and fear of certain animals are generally not valid reasons for denying the use of a service animal as a reasonable accommodation. If a person is allergic, both the person who is allergic and the person who uses the service animal should be accommodated by assigning them to work in different rooms or areas within a larger work site. However, people who use service animals cannot be isolated or treated less favorably.

DOJ may not require that a service animal have any certification or specialized training, though most service animals do. DOJ may require that a service animal have the proper license and immunizations required by the appropriate jurisdiction.

The employee is responsible for ensuring that the animal is properly trained, behaves appropriately in the workplace, and is not disruptive. Service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the employee's disability prevents using these devices. In either of those cases, the employee must maintain control of the animal through voice, signal, or other effective controls. If an animal behaves inappropriately, such as by barking, growling, or threatening others, DOJ may ask the employee not to bring it to work until it can be trained to behave properly.

D. Adjusting Work Schedules

Components should approve flexible or alternative work schedules and telework for employees, as appropriate based upon the nature of the position, who cannot meet the requirements of the regularly scheduled tour of duty for their position for reasons associated with their disability. (Examples include schedule modifications for medical treatment, rest periods, or difficulty getting to work due to the nature of the impairment and limitations.) Leave may also be authorized as a reasonable accommodation. The employee should be provided with the necessary equipment to use at the telework site, if teleworking is an accommodation, or to participate in a telework program to enjoy the same benefit as his or her co-workers. Per DOJ Policy Statement 1200.1, *Telework*, telework may be approved as a reasonable accommodation for a disability without regard to the employee eligibility

requirements set forth in section C.2 of that policy statement. However, as with the granting of any accommodation, the employee must be a qualified individual with a disability who can perform the essential functions of his or her job with or without a reasonable accommodation. Current job performance should be considered as part of the assessment of whether the employee is qualified and whether the accommodation will be effective.

E. Travel

When an employee with a disability is traveling on official government business, the component must provide reasonable accommodations for the duration of the travel. Reasonable accommodations may be required in connection with transportation, lodging, and conference and meeting sites. Providing reasonable accommodations may include modifying travel policies or acting as an intermediary with transportation or lodging providers to ensure that their services are accessible. If an employee with a disability requests not to travel or to modify travel requirements as a reasonable accommodation, the component should treat such a request as it would any other accommodation request that involves switching job duties (*e.g.,* marginal v. essential function) or changing schedules.

V. Reassignment as a Reasonable Accommodation

Reassignment is an accommodation of last resort that is considered *only if* there are no other effective accommodations that would enable the employee with a disability to perform the essential functions of his or her current job or if all other possible accommodations would impose undue hardship. Reassignment may only be made to a vacant position. The law does not require the agency to create a new position or to move others from their jobs to create a vacancy.

A. Identification of Positions

The deciding official should work with the employee's HRO, as well as with the employee requesting the accommodation, to identify:

1. All appropriate vacant positions within the component for which the employee may be qualified, with or without reasonable accommodation.

2. All appropriate positions that the employee's HRO has reason to believe will become vacant over the next 60 business days and for which the employee may be qualified.

3. All appropriate positions within the entire DOJ for which the employee may be qualified.

B. Reassignment Availability

The ability of DOJ to reassign an employee who is no longer medically qualified for his or her position is limited. However, every effort should be made to identify potential suitable positions for which the employee is qualified and can perform the essential functions of the job with or without a reasonable accommodation.

C. Position Equivalency

The HRO should first focus on positions that are equivalent to the employee's current job in terms of grade level, pay, status, and other relevant factors for which he or she is qualified. If there is no vacant equivalent position, vacant lower graded positions for which the individual is qualified should be considered.

D. Relocation

Reassignment may be made to a vacant position outside the employee's commuting area if the employee is willing to relocate. As with other transfers not required by management, DOJ may not pay for the employee's relocation costs unless DOJ policy provides for such payments for non-disabled employees.

VI. Reassignment Process

A. Component Review in Preparation for Reassignment

Prior to beginning the reassignment process, the supervisor/deciding official will meet with the DEPM, RAC, OGC, HRO, or medical personnel and will consider all available information to make the following determinations:

1. Whether the employee is a qualified individual with a disability such that he or she would be entitled to an accommodation, provided the accommodation would not create undue hardship or pose a direct threat to self and others;

2. Whether a reassignment is necessary (employee cannot perform the essential functions of his or her current position with or without reasonable accommodation); and no other reasonable accommodation can be made in the employee's current position or component; and

3. Whether the employee or his or her health care provider has provided sufficient information regarding the disability to determine whether the employee could perform the essential functions of a current vacancy with or without reasonable accommodation.

B. Search within the DOJ Component

1. Once it is decided that reassignment would be appropriate, the HRO of the employee, as soon as possible after being notified by the deciding official, will begin reviewing current job vacancies within the component by grade level and job series. The HRO will obtain additional information from the employee to determine his or her qualifications based upon his or her resume and any relevant certifications, education, or training information. In addition to current vacancies, the HRO will consider positions that may become vacant within 60 days, (e.g. pending retirements, reassignments, and resignations). A position is vacant until a formal job offer has been made to a job candidate. Open recruitment and selection processes will be placed on hold for suitable vacancies closest to the employee's current grade level and salary range. The HRO should consider the employee's preference in terms of job location and whether there are multiple suitable vacancies available.

2. This search must be completed within 15 business days of the request.

3. If a suitable position is found, the employee will be extended a written offer for the position. If there are multiple suitable positions, the employee will be notified of this and will be given an opportunity to express his or her preference. Ultimately, the HRO will determine the best placement taking into account the employee's preference and the needs of the agency.

4. If the employee does not accept the offered position within 10 business days or, if no suitable position for reassignment is found after conducting the Department-wide search described below, the employee will be notified in writing that he or she may pursue disability retirement with the Office of Personnel Management (OPM) or voluntarily separate in lieu of removal.

C. Department-wide Search

1. In the event that a suitable job vacancy is not available within the component, the employee's HRO has 15 business days from the date it was notified of the request by the deciding official to conduct a Department-wide search for a suitable vacancy. The HRO will contact component HROs and provide them with the employee's resume and any other job qualifying information. Component HROs should respond within 15 business days as to whether they have not identified a suitable position.

a. The component HROs will review all vacancies at or below the employee's current or equivalent grade/salary range by job series for which the employee meets the minimum qualifications.

b. The component HROs will review position descriptions and confer with the employee and the employee's HRO, as necessary, to determine whether the employee can perform the essential job functions with or without reasonable accommodation. Open recruitment and selection processes will be placed on hold for suitable vacancies closest to the employee's current grade and salary range. 29 C.F.R. §1630.2(o)(2)(ii).

2. Upon completion of job search (15 business days):

   a. If there are one or more positions for which the employee is qualified, the employee's HRO will share this information with the employee. The employee will provide feedback within 3 business days about possible job placements. The employee's HRO, in consultation with the HRO of the component with the vacancy, will ultimately determine the most appropriate placement after considering the employee's preference, work history, and job location.

   b. Once the appropriate position is identified, a written offer will be made to the employee by the component HRO. For those instances where a security clearance is required, the employee will be provided a conditional offer of employment pending successful adjudication of a background investigation and other relevant suitability factors. The employee will have 10 business days from the date of receipt of the written offer to accept it. The written offer shall inform the employee that if he or she declines the offer or fails to otherwise respond within 10 working days, the Department will have no further obligation to seek other accommodations for the employee.

3. If, by the end of the 15-day job search period, a vacancy at or below the employee's current or equivalent grade level and salary range is not identified for which the employee is qualified and can perform with or without a reasonable accommodation, the employee's supervisor and the employee's HRO, RAC, and/or the DEPM will meet with the employee. They will inform the employee that the attempt to accommodate him or her through reassignment was unsuccessful. The employee may pursue disability retirement with OPM, or consider voluntary separation in lieu of removal.

VII. Denial of the Reasonable Accommodation Request

If a request for reasonable accommodation is denied, the supervisor or deciding official should notify the requestor, in writing, of the specific reason(s) for the denial (*e.g.*, why the medical documentation is inadequate to establish that the individual has a disability or needs reasonable accommodation, why the requested accommodation would not be effective, or why the accommodation would pose an undue hardship), and the identity of the supervisor or deciding official. This notification should also inform the requestor that he or she has the right to file an EEO complaint as a result of the denial, and may also request mediation to informally address the matter. DOJ Form 100 C, *Denial of Reasonable Accommodation*, may be used to notify the requestor of the denial.

When a specific requested accommodation is denied and a different one is offered in its place, the written notice will explain both the reason for the denial of the requested accommodation and the reason(s) why the supervisor or deciding official believes the chosen accommodation will be effective.

VIII. Request for Reconsideration

Individuals with disabilities can request prompt reconsideration of a denial of reasonable accommodation.

A. First Level Reconsideration

If an individual desires reconsideration, he or she should ask the supervisor or deciding official to reconsider the decision within 10 business days of notification about the decision. The individual should present additional information to support his or her request, if any, at that time. The designated management official will respond to the request for reconsideration within 10 business days.

B. Second Level Reconsideration

If the supervisor or deciding official does not reverse the decision, the individual can ask the second-line supervisor, or other official designated by the Head of Component for this purpose, to do so. The response to a request for reconsideration must be made within 5 business days.

In the alternative, the employee may also request assignment of a mediator from the Department's Alternative Dispute Resolution Program (ADR) program (administered by the Federal Bureau of Investigation's, Office of Equal Employment Opportunity Affairs), to assist the employee and management with reaching an agreement about an accommodation request within 10 business days of the denial An individual's

participation in the alternative dispute resolution process does not satisfy the requirements for timely filing an EEO claim, an appeal before the Merit Systems Protection Board (MSPB), or a grievance.

IX. EEO Complaint Process

An employee or applicant for employment who believes he or she was unlawfully denied an accommodation, did not receive an accommodation, or experienced an undue delay in processing and granting an accommodation may file a complaint of discrimination. A claim alleging the denial of a personal services assistant – whether to assist with job performance or with personal care – may be made, and will be addressed, using the federal sector EEO complaint process. An employee or applicant may also file a complaint of discrimination alleging retaliation as a result of requesting an accommodation or otherwise participating in the process to obtain one. An employee or applicant, who believes he or she was subjected to unlawful discrimination and desires to file a complaint of discrimination, must contact an EEO counselor within 45 calendar days of the alleged discriminatory action. The request for an EEO counselor should be made to the component or bureau EEO office where the employee or applicant believes the discrimination occurred. The employee may also request mediation during EEO counseling.

The employee or applicant may also file a mixed case complaint with the EEO office or an appeal with the MSPB if he or she believes that the denial, delay, or lack of effective accommodation resulted in an adverse action appealable to the MSPB.

X. Information Tracking and Reporting Requirements

A. Tracking

1. Executive Order (EO) 13164 requires the Department to track the processing of requests for reasonable accommodation. This information should be used to evaluate the agency's performance in responding to requests for reasonable accommodation. The Executive Order does not require that agencies maintain particular recordkeeping systems, documents, or databases, but they must maintain records in some form. Records that contain medical information are fully subject to the confidentiality restrictions of the Rehabilitation Act and Privacy Act.

2. The employing component should maintain all relevant records regarding an accommodation request for the duration of the individual's employment. These records are confidential. They must be kept in a reasonable accommodation file separate from the individual's personnel file or supervisor's desk file. The respective EEO office will also develop cumulative records, without individual identifiers, based on the records maintained by the supervisors/deciding officials,

DEPMs, RACs, or other designated record keeper. These cumulative records will be kept for a minimum of 3 years.

B. Reporting

Specifically the following information should be documented and maintained about each request for accommodation:

1. The specific reasonable accommodation requested, if any;

2. The job (occupational series, grade level, and agency component) sought by the requesting applicant or held by the requesting employee;

3. Whether the accommodation was needed to apply for a job, perform the essential functions of the job, or enjoy the benefits and privileges of employment;

4. Whether the request was granted (which may include an accommodation different from the one requested) or denied;

5. The identity of the deciding official;

6. If denied, the basis for the denial; and

7. The number of days taken to process the request.

XI. Relationship of Procedures to Statutory and Collective Bargaining Claims

The Department's reasonable accommodation policy is in addition to statutory and collective bargaining protections for persons with disabilities and the remedies those protections provide when requests for reasonable accommodation are denied. For a collective bargaining claim, employees must file a written grievance in accordance with the provisions of the applicable collective bargaining agreement. Requirements governing the initiation of statutory and collective bargaining claims remain unchanged. The time frames for processing those claims also remain unchanged by this Instruction.

APPENDIX A

Applicable Authorities

Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 701) Prohibits discrimination on the basis of disability in the Federal Government and requires each federal agency to maintain, update annually, and submit to the Equal Employment Opportunity Commission (EEOC) an affirmative action program plan for hiring, placing, and advancing individuals with disabilities.

Section 503 of the Rehabilitation Act of 1973, as amended - Prohibits discrimination and requires employers with federal contracts or subcontracts that exceed $10,000 to take affirmative action to hire, retain, and promote qualified individuals with disabilities. All covered contractors and subcontractors must also include a specific equal opportunity clause in each of their nonexempt contracts and subcontracts.

Section 504 of the Rehabilitation Act of 1973, as amended - Prohibits discrimination based on disability in federally-funded and federally-conducted programs or activities in the United States, including employment programs.

Section 508 of the Rehabilitation Act of 1973, as amended - Requires that agencies ensure access for disabled employees and members of the public to electronic and information technology that is comparable to access by other non-disabled employees and members of the public.

The Americans with Disabilities Act of 1990, as amended by the Americans with Disabilities Act of 2008 (ADAAA), (42 U.S.C. §12101) - Protects persons with disabilities from discrimination in employment in the private sector and state and local governments. The substantive employment standards of the ADA/ADAAA are applicable to the Federal Government through the Rehabilitation Act.

The Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151) Requires access to facilities designed, built, altered or leased with federal funds.

Executive Order 13164 (2000) - Requires agencies to establish procedures to facilitate the provision of reasonable accommodations.

Title 5, Code of Federal Regulations, Part 339 – This part defines the circumstances under which medical documentation may be acquired and examinations and evaluations conducted to determine the nature of a medical condition that may affect safe and efficient performance.

Title 29, Code of Federal Regulations, Parts 1614 and 1630 – Part 1614 details the Federal Sector Equal Employment Opportunity Program and Process, and requires federal agencies to

engage in affirmative action for individuals with disabilities; and part 1630 implements the Americans with Disabilities Act.

U.S. Equal Employment Opportunity Commission - A Technical Assistance Manual on the Employment Provisions (Title 1) of the ADA (1992); "Notice of Rights under the ADAAA of 2008;" "Revised Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act" (October 2002); EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation" (October 2000).

APPENDIX B

- DOJ Form 100A, *Request for Reasonable Accommodation* [PDF]
- DOJ Form 100B, *Reasonable Accommodation Information Reporting Form* [PDF]
- DOJ Form 100C, *Denial of Reasonable Accommodation* [PDF]